



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Aero Technology Company

File: B-235277

Date: July 7, 1989

DIGEST

1. Protest that request for proposals for engine seals restricted to preapproved sources is improper because it provided for approval based on an offeror's manufacture of similar items is untimely where protester waited until after award selection before raising this issue.
2. Protest that awardee's offer is unrealistically low does not provide a basis for the agency to reject a technically acceptable fixed-price proposal absent a finding of nonresponsibility.

DECISION

Aero Technology Company protests the proposed award of a contract to Beacon Industries under request for proposals (RFP) No. F41608-88-R-0758 issued by the Air Force for labyrinth seals for T56 engines used on the C-130 Hercules cargo aircraft. Aero essentially contends that the qualification requirements that permitted the qualification of firms without the need for preaward samples were unfair and that the awardee's bid was unrealistically low.

We dismiss the protest.

The RFP was issued October 6, 1988. The procurement was restricted to approved sources because the Air Force determined that the seal was critical since failure of the part could result in unsafe engine operation. The qualification requirements were specific to this seal. The requirements allowed an offeror to qualify as an approved source if it (1) had manufactured the part for the prime engine manufacturer, (2) manufactured a similar item, or (3) prior to award submitted and received approval of qualification samples. The qualification procedures also provided that an approval based on similarity was a contingent approval and that final approval would be given only upon successful completion of sample testing and

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successful delivery of production items once a contract was awarded. The RFP listed General Motors Corp./Allison Gas Turbine Division, Beacon, P/M Engineering Co. and Aero as qualified sources for the seal. On March 20, 1989, the closing date for receipt of initial proposals, the Air Force received proposals from three of the approved sources, including Aero, and three unapproved sources. The agency intends to make award to Beacon, the low offeror.

Aero essentially argues that Beacon is not an approved source because it was qualified based on the production of similar items which Aero asserts is an improper method of qualification. According to Aero, since approval based on similarity is contingent, an offeror qualifying on that basis has not really been "approved." Aero further complains that allowing such approval discriminates against a firm like Aero because it was required to have its qualification samples preapproved while Beacon was not. Aero also objects to the RFP's requirement for the submission of first articles for approval after award.

We consider Aero's challenge of the qualification requirements to be untimely. The solicitation advised offerors of the source approval requirement, and while the actual qualification procedures were not included in the RFP, Aero does not argue that it did not know the specifics of the qualification procedures prior to the closing date, and the record suggests that Aero indeed was aware of them--the agency reports, and Aero does not rebut, that Aero qualified after submitting samples because it could not qualify under the "similar item" standard. The solicitation, as amended, also listed Beacon as a qualified source. Thus, Aero knew prior to the closing date for receipt of proposals that approved source qualification was required, that a firm could be qualified in any one of three ways, and that Beacon was a qualified firm. Aero did not protest, however, until April 21, 1989, a month after the closing date and 6 months after the RFP was issued. This is inconsistent with the timeliness requirements of our Bid Protest Regulations, which require protests based upon alleged apparent improprieties in a solicitation to be filed prior to the next closing date; other protests must be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(1) and (2) (1988).


Although Aero states that it did know which specific qualification procedures Beacon used to become qualified until after Beacon was selected for award, we do not think Aero properly could participate in a procurement knowing that its competitors could qualify in one of three ways and

then object, when it does not receive the award, to the use of one of those qualification procedures. Therefore, if Aero objected to the use of the "similar item" qualification approach and the fact that a competitor listed in the RFP as qualified could have qualified under that approach, it should have protested prior to the closing.

Aero's protest of the RFP's requirement for the submission of first articles is also untimely since it concerns an alleged apparent solicitation impropriety which should have been filed prior to closing. American BallScrew, 66 Comp. Gen. 133 (1986), 86-2 CPD ¶ 664.

Aero further asserts that Beacon's offer is unrealistically low. The agency maintains that the price is realistic based on the competition and prior solicitations. We have no reason to question the agency's judgment in this regard. In any event, the fact that an offeror's price is considered unreasonably low does not provide a valid basis for rejecting a technically acceptable fixed-price proposal absent a finding of nonresponsibility. Ball Technical Products Group, B-224394, Oct. 17, 1986, 86-2 CPD ¶ 465. Aero specifically declined to challenge Beacon's responsibility. Further, our Office does not review protests against affirmative determinations of responsibility unless either possible fraud or bad faith on the part of contracting officials is shown or the solicitation contains definitive responsibility criteria which have allegedly been misapplied. Nationwide Glove Co., Inc., 67 Comp. Gen. 151 (1987), 87-2 CPD ¶ 624. There is no evidence of those circumstances present here.

The protest is dismissed.


Ronald Berger
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